

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 10-O-09685-LMA (11-O-11438)
)	
MARK STEVEN BROWN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 225511,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Mark Steven Brown (respondent) was charged with 13 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

³ If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on June 5, 2003, and has been a member since then.

Procedural Requirements Have Been Satisfied

On November 1, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his then-correct membership records address. A return receipt was not received by the State Bar. However, by checking the tracking number of the certified mailing, the State Bar learned that delivery was attempted on November 2, 2011, and a notice was left by the U.S. Postal Service at the delivery address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

On November 21, 2011, the deputy trial counsel assigned to this matter phoned respondent at his official membership telephone number and spoke to him. The deputy trial counsel reminded respondent of the NDC and then asked whether he was going to answer it and/or whether he wanted to discuss settling the matter. At that point, the phone disconnected. The deputy trial counsel tried calling back, but could only leave a voicemail message. On November 22, 2011, the deputy trial counsel sent a follow-up letter with the NDC, via regular first class mail, to respondent at his then-correct membership records address. The letter reminded respondent, among other things, to file a response to the NDC in order to avoid entry of his default. On December 6, 2011, the deputy trial counsel received a voicemail message from respondent, which he returned on that same date. The deputy trial counsel left a voicemail

message for respondent and also sent an email message to respondent, which included a request for respondent to return his phone call, as well as another reminder that to avoid having his default entered, respondent must respond to the NDC.

Respondent failed to file a response to the NDC. On December 28, 2011, the State Bar served on respondent at his then-correct membership records address, a motion for entry of respondent's default; the motion was filed on January 3, 2012. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on July 24, 2012.⁴ The order entering the default was served on respondent at his current membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On February 8, 2013, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since the default was entered on July 24, 2012; (2) there are open investigations pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made payments resulting from

⁴ An earlier order entering respondent's default was vacated, as it had been served on respondent at an incorrect address.

respondent's conduct as alleged in the NDC. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on March 5, 2013.

Respondent has one prior record of discipline.⁵ Pursuant to a Supreme Court order filed on November 28, 2011, respondent was suspended for two years, the execution of which was stayed, and he was placed on probations for two years subject to certain conditions, including that he be suspended from the practice of law for a minimum of the first six months of his probation and until he pays specified restitution. Respondent stipulated that he: (1) failed to perform legal services competently; (2) failed to render appropriate accounts to a client; (3) failed to return unearned fees; (4) failed to respond to a client's reasonable status inquiries; (5) failed to release a client file upon termination of employment; and (6) failed to cooperate and participate in a State Bar investigation pending against him.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

⁵ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

1. Case Number 10-O-09685 (Nawroz Matter)

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to respond to discovery requests, which resulted in the dismissal of the client’s case.

Count Two – respondent willfully violated section 6068, subdivision (m) (failure to communicate) by failing to inform his client that: (1) the court had ordered responses to discovery; (2) he did not file the discovery responses; (3) the court imposed monetary sanctions as a result of the failure to respond to discovery; and (4) the court dismissed the client’s case as a result of that failure – all of which were significant developments in the client’s legal matter.

Count Three –respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to advise his client of her legal options when her case was dismissed without prejudice.

Count Four – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing to provide his client with an accounting of the \$1,000 payment, which the client had advanced to him.

Count Five – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing to return the client’s cell phone, upon request, which the client had sent to respondent in relation to her litigation matter.

Count Six – respondent willfully violated section 6068, subdivision (i) by failing to provide a written response to the State Bar’s requests for a written response to allegations raised by his client’s complaint.

2. Case Number 11-O-11438 (Hua-di Matter)

Count Seven – respondent willfully violated rule 4-100(B)(1) of the Rules of Professional Conduct (failure to notify client of receipt of client funds) by failing to notify the client that he had received \$10,000 in settlement funds on behalf of the client on or about January 28, 2010.

Count Eight – respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to promptly pay client funds) by delaying until February 2011, to pay, as requested, any part of the settlement funds to his client.

Count Nine – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide his client with an accounting of the client settlement funds, which he had received.

Count Ten – the court does not find respondent culpable of willfully violating section 6106 (moral turpitude) by not paying the settlement funds promptly and not communicating with his client, as the facts, as set forth, fail to support a finding of moral turpitude by clear and convincing evidence.

Count Eleven - respondent willfully violated section 6103 (violation of a court order) by failing to appear before the Orange County Superior Court for the November 4, 2010 hearing as ordered by that court in its October 22, 2010 citation.

Count Twelve – respondent willfully violated section 6068, subdivision (m) (duty to communicate) by failing to respond to his client's numerous telephone messages, emails, and letters, inquiring about the status of the payment of the settlement money.

Count Thirteen – respondent willfully violated section 6068, subdivision (i) by failing to provide a written response to the State Bar, as requested, regarding the allegations raised in the complaint, which was filed against respondent by the client's new attorney on the client's behalf.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested at his membership records address; contacted respondent by telephone; left voicemail messages for respondent; sent a letter with enclosures, including the NDC, by regular first-class mail to respondent's membership records address; and attempted to contact respondent via email;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Mark Steven Brown be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and

(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Mark Steven Brown, State Bar number 225511, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: May ____, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court